

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 25, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP2726

Cir. Ct. No. 2009CV19886

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

SUSAN M. WILBRANDT,

PLAINTIFF-APPELLANT,

V.

CHASE AUTO FINANCE CORPORATION,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: JOHN SEIFERT, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Susan M. Wilbrandt appeals a judgment ordering Chase Auto Finance Corporation to pay her lawyer, Gwendolyn Connolly, \$107,470 in attorney fees because Wilbrandt was the prevailing party in this wrongful debt collection case. Wilbrandt argues that the circuit court misused its

discretion in determining that the prevailing market rate for Connolly's services was \$300 per hour rather than the \$425 per hour she sought. We affirm.

¶2 Wilbrandt filed suit against Chase Auto Finance Corporation, alleging that it had wrongfully repossessed her car. Wilbrandt prevailed after extensive litigation. The circuit court awarded Wilbrandt attorneys fees and costs under WIS. STAT. § 425.308 (2011-12).¹ The circuit court concluded that the 331 hours Connolly worked on the case was reasonable and that the market rate for her services was \$300 per hour.

¶3 The starting point for determining attorneys fees “‘is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.’” *Crawford County v. Masel*, 2000 WI App 172, ¶7, 238 Wis. 2d 380, 617 N.W. 2d 188 (citation omitted). A reasonable hourly rate is the prevailing market rate for an attorney with a similar level of skill and experience providing similar services in the same community. *Id.*, ¶8. In determining whether a rate is reasonable, the factors set forth in Supreme Court Rule 20:1.5(a) provide guidance. See *Kolupar v. Wilde Pontiac Cadillac, Inc.*, 2004 WI 112, ¶¶24-25, 275 Wis. 2d 1, 683 N.W.2d 58. They include the likelihood that the lawyer was precluded from accepting other employment by taking the job, the fees customarily charged for similar legal services in the same locality, and the ability, reputation, and experience of the lawyer. *Id.*, ¶25.

¶4 We review a decision awarding attorney's fees and costs for a misuse of discretion. *Id.*, ¶22. “When we review a discretionary decision, we

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

examine the record to determine if the circuit court logically interpreted the facts, applied the proper legal standard, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach.” *Crawford County*, 238 Wis. 2d 380, ¶5. We will “not substitute our judgment for the judgment of the circuit court.” *See Kolupar*, 275 Wis. 2d 1, ¶22. “We give deference to the circuit court’s decision because the circuit court is familiar with local billing norms and will likely have witnessed first-hand the quality of the service rendered by counsel.” *See id.*

¶5 Before reaching its decision about the prevailing market rate for Connolly’s services, the circuit court conducted a lengthy hearing at which it actively questioned both Chase and Wilbrandt about their positions and sought additional information about particular points when it needed to do so. The circuit court considered persuasive the fact that in January 2011 Judge Michael Dugan awarded Connolly \$300 per hour in *this same case* as a discovery sanction. The circuit court noted that Judge Dugan had before him the United States Consumer Law Attorney’s Fee Survey from 2008-2009 when it made that ruling. The Survey showed that nationwide a typical consumer law attorney who worked in a small office like Connolly with her level of experience charged \$305 per hour. The circuit court also noted that, for attorneys in the Midwest, the median rate dropped to \$262 per hour for an attorney in a small firm with Connolly’s level of experience.

¶6 In rejecting Wilbrandt’s proposed market rate of \$425 per hour for Connolly’s services, the circuit court reasoned that Wilbrandt had not met her burden of establishing that the prevailing market rate was \$425 per hour and had not shown that Connolly could have sold the time she worked on this case to another client had she not been working on this case. Although the circuit court

did not explicitly address in its oral decision each document Wilbrandt submitted in support of her claim, we have reviewed the documents and find nothing that suggests that the circuit court misused its discretion in establishing \$300 per hour as a reasonable rate for Connolly's services.

¶7 In addition to an affidavit in which Connolly averred that her billing rate was \$425 per hour as of January 1, 2012, Wilbrandt submitted a copy of a document filed in a different case entitled "Certification of John McCoy In Support of Plaintiffs' Motion for Attorneys Fees." McCoy, who is Connolly's client, states in the document that he agreed to pay Connolly at her 2012 hourly rate of \$425 per hour for prosecuting a claim of civil theft for him. The document is of limited value in determining the prevailing market rate in this case because it does not establish that the work Connolly performed in that case was similar to the work Connolly performed in this consumer law case. Moreover, McCoy's statement is not sworn, so it is of limited evidentiary value. Wilbrandt also submitted an order from *Kluz v. Countrywide Financial Corporation*, Milwaukee County Case No. 2007CV2477, in which the circuit court awarded Connolly attorney fees at a rate of \$425 per hour. The *Kluz* order is premised on the McCoy unsworn statement, which we have determined is only of limited evidentiary value for the reasons we just explained. Therefore, the *Kluz* order is entitled to little weight as evidence of the reasonable hourly rate in this case.

¶8 Wilbrandt submitted affidavits from two attorneys. Attorney Mary Catherine Fons averred that she bills \$400 per hour and offered her opinion that Connolly's \$425 rate is reasonable and within the range of rates charged in Wisconsin. Fons's hourly rate is not directly comparable because Fons has substantially more legal experience than Connolly. Moreover, Fons's *opinion* that the rate is reasonable is not "evidence" that supports an assertion that \$425 per

hour is the prevailing market rate. An affidavit that asserts conclusions without averring the factual predicates necessary to support those conclusions is of limited value. *See Crawford County*, 238 Wis. 2d 380, ¶15. Attorney Jeffrey Meyer avers that he believes that \$425 per hour is a reasonable rate based on Connolly's skill and reputation, but he does not state what he bills per hour for work similar to the work Connolly did in this case and does not state that he has knowledge of rates charged by consumer law attorneys in Wisconsin. His affidavit focuses primarily on whether the number of hours that Connolly worked in this case was reasonable, rather than on whether the rate was reasonable. These affidavits have some probative value on the question of the prevailing market rate for Connolly's services, but do not provide grounds for concluding that the circuit court misused its discretion in giving Judge Dugan's prior award in this same case more weight.

¶9 Finally, Wilbrandt offered several empirical analyses to support her claim that \$425 is the prevailing market rate for Connolly's services. The 2011-12 Laffey Matrix shows hourly rates for lawyers with varying levels of experience and is prepared by the U.S. Attorneys Office for the District of Columbia. The Laffey Matrix shows that an attorney with 11 to 19 years of experience nationwide has an average hourly rate of \$435, which Wilbrandt suggests should be adjusted downward to \$408 to reflect the lower cost of living in Milwaukee. This information is of limited usefulness in determining the prevailing market rate in this case because it is not specific to consumer law attorneys and provides a national average, rather than information individualized to reflect the economic realities of different legal markets in the United States. The National Law Journal Billing Survey lists the hourly rate for partners in four large Wisconsin law firms as ranging between \$325 and \$654. This information is of limited probative value because it pertains to billing rates at large law firms, which usually charge more

than small law firms and solo practitioners, and is not specific to consumer law. Lastly, Connolly cites to the United States Consumer Law Attorney's Fee Survey for 2010-2011, a later edition of the same survey on which Judge Dugan relied in setting Connolly's fees at \$300 per hour in an earlier award in this case. The Survey, which is more relevant than the other two surveys to the question of the prevailing market rate for Connolly's services in this action, shows that consumer law attorneys in small law practices in the Midwest have an average billing rate of \$276 per hour and a median billing rate of \$300 per hour. It also shows that consumer law attorneys in the Midwest with sixteen to twenty years of experience, without regard to firm size, have a median billing rate of \$341 per hour. Given Connolly's small law practice and her sixteen to twenty years of experience, the Survey suggests her billing rate should be between \$276 and \$341 per hour. Because the circuit court determined that \$300 per hour is the prevailing market rate for Connolly's services in this case, and that amount is within the range the Survey suggests would be appropriate, the Survey does not provide grounds for concluding that the circuit court misused its discretion.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

